

C/m

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 31 2005 ★

LONG ISLAND OFFICE
CV-03-4229 (LDW)

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TERESA HELMETT and EUGENE HELMETT,
both in their individual capacities and as natural
parents and guardians of JASON HELMETT,
a minor,

Plaintiffs,

- against -

COUNTY OF NASSAU,
ROBERT STEWART, a/k/a BOBBY STEWART,
in both his individual and official capacities, and
SEAN A. BOURNE, in both his individual and
official capacities,

Defendants.

ORDER

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A. Procedural History Regarding Age and Legal Status of Jason Helmett

The Plaintiffs, Teresa Helmett, Eugene Helmett and Jason Helmett filed an Original Complaint with the Eastern District of New York, Civil Case Number CV-03-4229, on or about August 27, 2003, and asserted various claims under United States Federal law and New York State law against Nassau County in the action initially captioned:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
TERESA HELMETT, EUGENE HELMETT,
and JASON HELMETT,

Plaintiffs,

- against -

CV-03-4229 (LDW)(ARL)

COUNTY OF NASSAU, NASSAU COUNTY
SHERIFF'S DEPARTMENT, NASSAU COUNTY
JUVENILE CORRECTIONS CENTER, COUNTY
OF SUFFOLK, SUFFOLK COUNTY SHERIFF'S
DEPARTMENT, BOBBY STEWART, in both his
individual and official capacities and
SEAN A. BOURNE, in both his individual and
official capacities,

Defendants.

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In response to the original complaint, the County of Nassau, Nassau County Sheriff's Department and the Nassau County Juvenile Corrections Center brought a Rule 12 motion to dismiss which was fully filed with the Eastern District on or about May 3, 2004.

A conference was held on September 13, 2004, wherein the Honorable Leonard D. Wexler dismissed the Nassau County Defendants Rule 12 motion to dismiss without prejudice and directed Plaintiffs to serve an amended complaint on the Nassau County Defendants.

The Plaintiffs amended their complaint and labeled it "First Amended Complaint," on or about September 29, 2004, and captioned the action as follows:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
TERESA HELMETT and EUGENE HELMETT,
both in their individual capacities and as natural
parents and guardians of JASON HELMETT,
a minor,

Plaintiffs,

CV-03-4229 (LDW) (ARL)

- against -

COUNTY OF NASSAU,
ROBERT STEWART, a/k/a BOBBY STEWART,
in both his individual and official capacities, and
SEAN A. BOURNE, in both his individual and
official capacities,

FIRST AMENDED COMPLAINT

Defendants.

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The County of Nassau answered the First Amended Complaint on or about October 25, 2004.

B. Order Relating to the Age and Legal Status of Jason Helmet

Plaintiff's counsel, Teresa Helmet, Eugene Helmet and Jason Helmet have each represented and acknowledged that Jason Helmet was born on October 5, 1985. Jason Helmet therefore, reached the age of majority (eighteen years of age under N.Y.C.P.L.R. §105(j)) on October 5, 2003.

Plaintiff's counsel together with Plaintiffs have acknowledged that Jason Helmet reached the age of majority before the First Amended Complaint was filed. Plaintiff's counsel together with Plaintiffs have represented that characterizing Jason Helmet as a minor in the caption and body (at paragraphs 4-6) of the First Amended Complaint was a mistake. The Plaintiffs have represented that Jason Helmet should have been included in the caption and body of the First Amended Complaint as pursuing legal claims in his own right and in his individual capacity, free from any incapacity caused by age.

The Plaintiffs and the County of Nassau have agreed that the First Amended Complaint ought be construed as if the Complaint had been properly drafted with respect to Jason Helmet's age and legal status.

The parties have contacted the Honorable Leonard D. Wexler, who has acknowledged and approved that the First Amended Complaint will be construed as if brought by Teresa Helmet, Eugene Helmet and Jason Helmet, each in their individual capacities without any incapacity caused by age.

The parties have represented that Jason Helmet has been presented a Settlement Agreement dated December 28, 2004. Pursuant to a direction by the Honorable Leonard D. Wexler, Jason Helmet provided the Court with an affidavit which states: (1) his name; (2) date of birth; (3) that he is familiar with the terms of the aforementioned Agreement;

(4) that he understands the terms; (5) that he thinks that they are fair and (6) that he feels he was adequately and competently represented by counsel in this lawsuit. Jason Helmett has also provided the County of Nassau with a copy of his Birth Certificate which is attached to this order as Exhibit "A."

SO ORDERED:

LS/
LEONARD D. WEXLER, U.S.D.J.
CENTRAL ISLIP, NY
1/31/05

EXHIBIT A

New York State Department of Health

Albany, N.Y. 12237

Certificate of Birth Registration

This certifies that a certificate of birth has been filed under the name of:

JASON HELMETT

Sex: Male

Born on: October 5, 1985

At: Port Jefferson, New York

Name of father:
Eugene John Helmett, Jr.

Maiden name of mother:
Teresa Rosa

Date filed: October 14, 1985

Local Registration No: 2198

Date issued: October 14, 1985

This notice is void if it contains any erasures or corrections.

Registrar of Vital Statistics
Address: INC. VILLAGE OF PORT JEFFERSON
121 WEST BROADWAY
PORT JEFFERSON, N.Y. 11777